

Remarks

Claims 1-5 and 7-19 are pending in the present application. Claims 1-5 and 7-19 are rejected. Claims 1, 2, 18, and 19 are currently amended. Claim 15 is cancelled.

Rejection under 35 U.S.C. §103 (a)

CLAIMS 1, 7-11 and 15-16

The Examiner has rejected claims 1, 7-11 and 15-16 under 35 U.S.C. §103(a) as being unpatentable over Calabrese '226 in view of McFarlane and Lerman. Applicant respectfully traverses this rejection.

Applicant has amended claim 1 to include the lateral reinforcing support member being “in the form of a plate” and being fabricated of a rigid material.

The Examiner states that Calabrese '226 discloses the claimed invention except the lateral support disposed under the neck region below the mandible, which is disclosed by McFarlane, and the lateral support positioned substantially parallel to a wearer's jaw, which is disclosed by Lerman. Applicant respectfully disagrees with the Examiner's assessment.

Applicant claims:

a lateral reinforcing support member
in the form of a plate
disposed in the neck region
below the mandible bone of the wearer
the support member being fabricated from a rigid material

The Examiner draws an analogy between the claimed lateral support member and Lerman's part 94. Lerman discloses a shell, of which part 19 is the upper portion. Part 19 extends around the entire front portion of the neck, including in the area under the chin. Accordingly, it is not a "plate" as claimed by Applicant. As Applicant's part name indicates, the claimed component is designed to provide support. It does so by being constructed of a rigid material as claimed. To the contrary, the shell, and hence part 19, is constructed of a single piece of semi-rigid material that remains flexible after it is formed into its shell shape (col. 6, lines 22-23 and line 31). Accordingly, Lerman's shell part 94 does not disclose Applicant's claimed lateral reinforcing support member in the form of a plate, and therefore, does not disclose Applicant's claimed support member positioned substantially parallel to a wearer's jaw.

The Examiner further states that the lateral support as taught by McFarlane could be positioned substantially parallel to the wearer's jaw to allow the lateral support to conform to the anatomical shape of the neck to stabilize the jawbone. The vertical positioning of the stay members is repeatedly noted in the McFarlane patent. It is therefore, clear from the patent that McFarlane did not contemplate support members disposed parallel to a wearer's jaw. Without that teaching present in Lerman, as noted above, or in Calabrese '226, the combination of Calabrese '226, McFarlane and Lerman does not render obvious Applicant's claimed lateral reinforcing support member positioned substantially parallel to a wearer's jaw.

Although the Examiner states that claim 16 is rejected by the above-mentioned references, not one of these references discloses Applicants claimed use of color indicative of a material property of the support member. Accordingly, claim 16 is not anticipated by the combination of Calabrese '226, McFarlane and Lerman.

Claims 7-11 and 15-16 either directly or indirectly depend on claim 1 and therefore, are also patentable over the cited references. Withdrawal of the §103 rejection of claims 1, 7-11 and 15-16 is, therefore, respectfully requested.

CLAIMS 2-6, 12 -14 and 17

The Examiner has rejected claims 2-6, 12-14 and 17 under 35 U.S.C. §103(a) as being unpatentable over Calabrese '226, McFarlane and Lerman, and in further view of Monfardini '027. Applicant respectfully traverses this rejection.

First, it is noted that claim 6 was previously cancelled.

The Examiner cites Monfardini as disclosing support members that are rectangular, substantially flat, and have rounded corners. The Examiner further states that the reason for substituting the Monfardini "support members" 20 for the support member disclosed by Calabrese and taught by McFarlane and Lerman is that both are functionally equivalent (used to provide support around the user's neck). Applicant finds no evidence to support a conclusion that Monfardini's "support members" 20 are functionally equivalent to Applicant's claimed lateral reinforcing support member.

The Examiner characterizes the function of Applicant's and Monfardini's "support member" as "used to provide support around a user's neck." This is an overly broad description. The Examiner fails to state what is being supported by the members, and where the support is being provided. Both are key elements in determining what the actual functions of the parts are. Monfardini provides components that support one collar part with respect to another so the relative positions of the components can be maintained. Monfardini's components are positioned so they adjust the angle between the collar parts and the overlap of the components. To the contrary, Applicant's support members decrease lateral flexion and rotation of the wearer's head over and above the support already provided by the foam collar (page 6, lines 6-8) by being placed parallel to the wearer's mandible. Monfardini's "support members" do not increase or enhance the support of the collar they are merely structural components to initially construct the collar properly for a wearer. The Examiner's definition is so broad that under it even Monfardini's straps 10 and 11 would be a functional equivalent of Applicant's claimed support members because they "provide support" of the two collar parts with respect to one another and the support is provided "around a user's neck." This clearly would be an absurd

conclusion, as is the analogy between the Monfardini's part 20 and Applicant's claimed support member.

Monfardini discloses "**elongation adjusting components**" 20, not "support members." Monfardini's parts 20 **adjust** the relative position of the upper and lower sections 18, 19, of the collar, thereby sizing the collar for a particular wearer (col. 2, lines 60-72). It is very clear from the name of Monfardini's components and their description that their function is to adjust the positioning of parts of the collar for sizing purposes. This is not the function of Applicant's claimed lateral reinforcing support member. Applicant's claimed components provide a reduced range of lateral and rotational motion of a wearer's head (page 4, lines 23-24). Applicant's claimed components are used on a collar that is already sized for the wearer, and therefore do not provide a size adjustment function. It is certainly not obvious to take Monfardini's adjustment components, fix them to a single area of a collar, rather than using them to hold two components together, and position them parallel to the jaw to reduce the range of lateral and rotational motion of a wearer's head, because Monfardini's adjustment components are not functionally equivalent to Applicant's claimed support members, and further because no teachings brought to Applicant's attention ties these ideas together. There is no suggestion or motivation to combine Monfardini's components with the other cited referenced. The Examiner appears to read into the Monfardini patent that parts 20 provide a support function as claimed by Applicant. At best the Examiner is using hindsight which is not an acceptable basis for an obviousness rejection.

Regardless of the specific shape of Monfardini's adjustment components, i.e. flat, rectangular and having rounded corners, Monfardini does not render Applicant's claimed invention obvious for the reason's provided above.

For the aforementioned reasons withdrawal of the §103 rejection of claims 2-6, 12-14 and 17 is respectfully requested.

CLAIMS 18 and 19

The Examiner rejects claims 18 and 19 as being unpatentable over Calabrese in view of McFarlane. Applicant respectfully traverses this rejection.

Applicant has amended claims 18 and 19 to clarify that the support members are in the form of a plate and are made of a substantially rigid material, and thus differentiate these claims from the combination of Calabrese '226 and McFarlane.

The Examiner states that it would be obvious to one having ordinary skill in the art at the time the invention was made that turning a patient's neck from side to side to strengthen neck muscles is old and well know. The Examiner has not supported this contention as is required. ("In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command." MPEP §706). Nonetheless, Applicant will address the rejection. Applicant's use of the lateral reinforcing support members positioned parallel to the wearer's mandible provides resistance to strengthen the neck muscles of the wearer employing the cervical collar in a physical therapy or exercise regime (page 6, lines 8-12). It is the use of the lateral support components to enhance any mere turning of a patient's neck, that is novel. The Examiner's discussion of using additional support to support a user's neck is misplaced. The Examiner states, "A large individual such as a professional wrestler or football player would require additional support versus a small woman or child wearing a cervical collar would require less support members." Applicant is claiming "moving the wearer's head to one side to strengthen the wearer's neck muscles against the resistance provided by the lateral support member." Additionally, Applicant has the support member positioned substantially parallel to the mandible bone of the wearer. This positioning of the support member in a particular place provides the necessary resistance in the needed direction. The size of the wearer is not generally an issue as to where the support member is positioned. Furthermore, Applicant claims the support member being fabricated from a rigid material. This also enhances the resistive nature of the component to provide the desired benefit.

The Examiner has not shown any suggestion or motivation to modify the references or to

combine reference teachings to produce a method of exercising neck muscles. Additionally, as noted above the two references do not teach or suggest all the claim limitations, namely, "lateral reinforcing support member in the form of a plate disposed in the neck region below and substantially parallel to the mandible bone of the wearer, and moving the wearer's head to one side to strengthen the wearer's neck muscles against the resistance provided by the lateral support member."

The Examiner does not address claim 19 specifically, but Applicant notes that for the reasons provided in the preceding paragraph, claim 19 is also not obvious based on Calabrese '226 in view of Lerman.

For the aforementioned reasons withdrawal of the §103 rejection of claims 18 and 19 is respectfully requested.

Conclusion

Based on the Amendments and Remarks above, Applicant respectfully requests allowance of all pending claims.

Respectfully submitted,
SCHNADER HARRISON SEGAL & LEWIS LLP

Dated: 9/28/2007

By: Joan T. Kluger
Joan T. Kluger
Reg. No. 38,940
1600 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: (215) 751-2357
Fax: (215) 751-2205
E-mail: jkluger@schnader.com
Attorneys for Applicant